

APC Review Comments on Symphony PUD
August 2, 2010 APC Meeting
Community Development Department | City of Westfield

GENERAL PUD COMMENTS:

1. These comments are provided by the Community Development Department in response to the revised PUD proposal received on May 26, 2010. We have attempted to be as thorough as possible. Additional issues likely exist with other City departments (e.g., Public Works and Fire Department). The Community Development Department is actively working to obtain and incorporate those items for the APC's consideration. These comments also incorporate any comments received from plan commission members prior to the time of this report.
2. Westfield's corporate counsel will eventually need to sign off on the WHEREAS language included in the beginning of the proposal and other components of the document before the PUD text is finalized.
3. The City will need a revised legal description reflecting the removal of any portions of the PUD since the May PUD submission. Additionally, it would be helpful if the petitioner would provide a graphic exhibit that illustrates the boundaries of the various geographic areas included in the PUD's legal description. This should probably be included as an exhibit to the PUD ordinance.
4. All exhibits will need to be revised to accurately depict the parcels included in the Symphony PUD proposal.

PUD COMMENTS BY SECTION:

1.2.B.i. It would appear that this standard limits the number of "primary dwelling units" on all the property located within the area defined by the legal description in Exhibit A. It may make sense to clarify this definition. There is no accompanying development-wide limitation on the number of "accessory dwelling units." Should there be?

1.2.B.ii. It may make sense to delete the text "including lodging, office, retail, civic, civic support, education and agriculture use gross floor area" from this standard to avoid possible conflicts. The way the remaining standards are set forth would seem to address all possible non-residential uses. "Retail" is a defined term so it should be italicized here. To the extent that the PUD Ordinance is unclear on what is and what is not a retail use, the Director will make the determination. As long as this approach is acceptable to everyone, these standards may be workable. The APC should determine if the extent of what is being proposed in the way of non-residential uses is compliant with the recommendations of the comprehensive plan. If the APC determines that the extent of non-residential components of the proposal is consistent with the comprehensive plan, then there is no issue to discuss. If the APC determines that the extent of non-residential components of the proposal is not consistent with the

comprehensive plan, then the APC should discuss whether adequate information has been provided to the APC to support a departure from the comprehensive plan.

1.2.C. The Community Development Department has not received proof of consent from the property owner to include this property within the Symphony PUD zoning request. If this property is removed, this section should be removed from the PUD Ordinance. If consent is received, then this paragraph should be discussed. This section of the PUD sets forth a maximum for the amount of open space to be provided. A more meaningful standard would probably involve establishing a minimum amount of open space to be provided. The APC may wish to discuss this possible change with the petitioner. Also, the APC may wish to review the way the petitioner has defined “open space.” This definition significantly modifies the way the term is defined in the Zoning Ordinance (see definition of “Open/Green Space”).

1.3. This section refers to an Exhibit 9 that is not included in the May PUD submission packet. The petitioner should provide this exhibit. In addition, the City understands that PUD phasing plans are not generally used as hard standards to compel petitioners to act at scheduled times. However, some best estimate as to the order and timeline of development that will occur on the property is required (see the City’s PUD Ordinance – requires petitioner to provide phases in which project will be built, including area, density, use, public facilities, and open space to be developed in each phase; each phase to be described and mapped; projected dates for beginning and completion of each phase).

1.4.B.i. This section would appear fine as written. However, the term “Zoning Ordinance” is defined in a way that freezes the underlying zoning standards in place at the time the Symphony PUD is adopted. Assuming that this project will take 15 years or more to develop and that the City is likely to learn a few things about zoning regulation over that time which may precipitate important zoning ordinance changes that should govern future sections of this project, it is suggested that the term “Zoning Ordinance” should simply be defined as “The Comprehensive Zoning Ordinance of Westfield-Washington Township, 1977 as amended from time to time” (or something to that effect).

1.4.C.i This section refers to the defined term “Subdivision Regulations”. As defined, the term does not include WC 16.04.210. Unless there is a good reason to omit this part of the Zoning Ordinance, it should probably be included. Also, the subdivision regulations are frozen in the same manner as mentioned in the previous paragraph due to the reference to the term “Zoning Ordinance” as defined by the petitioner.

1.4.C.iii. The term “Director” should be a defined term, such as: “The Director of the City of Westfield’s Community Development Department.”

1.5.A. Exhibit 3 should be revised to exclude any property that has been removed from the Symphony proposal. The accompanying acreage calculations for the various Districts should also be revised to reflect any changes.

1.5.B. Just so everything is clear when administering this PUD ordinance, the 15% flexibility set forth in this section should be measured from the acreage numbers set forth in section 1.5.A. A sentence acknowledging this concept should be added. Section 1.5.A. sets forth approximate acreages. It is

difficult if not impossible to know if you are increasing or decreasing more than 15% from an “approximate” number.

1.7 The development plan review process is a ministerial review process. In other words, all that should be involved is an administrative review of whether a proposal complies with the standards applicable to the development or not. In concept, the Community Development staff supports the idea of allowing this function to happen at the department level. This would significantly increase department efficiencies by eliminating the unnecessary time, energy and expense associated with preparing such petitions for plan commission meetings. The same review and compliance is still required even though such petitions would not appear at an APC meeting. Additionally, the APC hearing process for development plans probably creates some expectation on behalf of affected parties that they will have some meaningful opportunity to be heard. In the case of the City’s development plan review process, this is probably not the case. Plans either comply with the applicable standards or they do not. This staff-level review concept is one that the Community Development Department would support addressing globally, not just for the Symphony proposal. For this reason, it may make sense to simply remove section 1.7. from this PUD.

2.1.D. It is suggested that the “and at the discretion or option of the Master Developer” text be removed. This provision should probably apply to whomever the owner or developer ends up being, not just the Master Developer.

2.2 The Community Development Department has identified several suggested changes related to the definitions section of this PUD. Those suggested changes are discussed throughout this report as they are referred to in the various sections of the PUD document.

3.1.A.ii. The text in this section should be cleaned up. None of the precise terms that appear in italics are actually defined. It would appear that the petitioner is attempting to refer to the following defined terms: “attached single-family dwellings,” “detached single-family dwellings” and “multi-family housing.” This should be confirmed and revised accordingly. Additionally, the term “primary building” is referenced or referenced by a reference within these definitions. This definition probably needs a little work. It appears to be a little vague due to the use of the word “main” in the definition.

3.1.C.i. Section 3.4 as referenced in this section is titled “Permitted Uses”, not “Permitted Use Table.” This should be appropriately corrected. Please review the proposed permitted uses for discussion among the APC members. This District permits “community recreational facilities.” As defined, this use may include a sports stadium and other sports-related improvements that could potentially conflict with the City’s Family Sports Capital of America initiative. The City has requested that all proposed zoning entitlements in the Symphony PUD that potentially conflict with this initiative be removed until such time as a determination on the location of the sports campus improvements has been made. Any facilities that are simply designed to provide recreational opportunities for Symphony residents would certainly be acceptable. This District also permits “sustainable energy facilities” and various types of schools and other non-residential uses. For these uses, the development standards set forth in section

3.2.G. apply. These standards include few restrictions. This regulatory approach is uncommon in Westfield and worthy of further discussion.

3.1.C.ii. The last sentence of this section is confusing. This sentence should be clarified and revised to avoid any confusion. Additionally, it would seem at that this section would prohibit live-work type of units from being created in the Residential District. If you dig into the definitions of the terms used in this section, this may not be the actual result. However, there is probably a clearer way to state this so as to avoid possible misinterpretation.

3.1.C.iv. If the term “garages” is appropriately added to the definition of “gross floor area,” the text “exclusive of open porches, terraces and garages” can be removed from this section. The APC may wish to discuss the petitioner’s minimum square footage proposed in this section. The 600 SF minimum is somewhat unconventional in Westfield.

3.1.C.v. If the term “garages” is appropriately added to the definition of “gross floor area,” the text “exclusive of open porches, terraces and garages” can be removed from this section. The APC may wish to discuss the petitioner’s minimum square footage proposed in this section. The 350 SF minimum is somewhat unconventional in Westfield. Additionally, the concept of accessory dwelling units is also somewhat unconventional and may be worthy of further discussion.

3.1.E.i. The term “additional” probably means “in addition to the occupations already permitted in the Zoning Ordinance.” This should be confirmed and clarified in the PUD ordinance.

3.1.E.iv. The APC may wish to discuss with the petitioner the 30% rule in this section. The Zoning Ordinance does not govern such uses in this manner today. The APC may wish to discuss this approach in further detail with the petitioner.

3.1.F.i. The APC may wish to discuss the development standards referenced in this section (Table 3-1). Some of the standards are significantly lower requirements than those traditionally approved in Westfield. The petitioner does not identify specifically where in the project these various lot standards would apply. As written today, the developer of any portion of the Residential District would appear to be able to unilaterally determine what lot standards apply to the given portion of the project by simply identifying the lot type at the time of filing (up to the maximum number of lots per lot type set forth in the table). This regulatory approach provides a great deal of flexibility for the developer and less predictability for the City and surrounding community than traditional methods of regulating lot standards. This is an item that the APC may wish to discuss in more detail with the petitioner.

3.1.F.ii. Same basic comments as the previous section.

3.1.F.iii. Same basic comments as the previous section. Additionally, this section includes the defined term “open space.” Although the APC may find it acceptable for lots to front on public or private open spaces if they are alley-accessed lots (as currently proposed), keep in mind that the petitioner has modified the City’s definition of “open space” in the PUD. The petitioner’s definition may include improvements that have not traditionally been contemplated as open space in Westfield (see

Zoning Ordinance definition), such as: potentially privately owned property (the Zoning Ordinance contemplates open space as being commonly owned), swimming pools, tennis courts, golf courses, active recreational facilities, developer or HOA offices, community buildings (public or private), assembly halls, outdoor auditoriums, sports fields, sports stadiums and “other community amenities.” This item may be worthy of additional discussion.

3.1.F.iv. Same basic comments about the developer being able to unilaterally select standards. Additionally, this section establishes front setbacks for the various lot types. These standards permit front yard setbacks that are much lower than traditional requirements in the Zoning Ordinance. Although these standards may be acceptable to the APC, it would be wise to confirm that such reduced standards do not create a problem for the various infrastructure agencies that serve this location. These reduced setbacks restrict the amount of “wiggle room” available for infrastructure improvements. This section also permits encroachments into the required front yard setbacks. Rather than establishing a setback requirement and then permitting encroachments within that area, an alternative approach would be to establish a hard front setback line and then (if the developer chooses to further restrict how close structures, balconies, porches and stoops can be constructed to that setback line) this objective can be accomplished through the private covenants of the subdivision or neighborhood. The APC may wish to discuss this item in further detail.

3.1.F.v. Same basic comments about the developer being able to unilaterally select standards.

3.1.F.vi. Same basic comments about the developer being able to unilaterally select standards.

3.1.F.vii. Same basic comments about the developer being able to unilaterally select standards. Additionally, the City does not prefer to regulate building height by limiting the number of stories in a building. Instead a simple measurement in feet based on the way “building height” is defined in the Zoning Ordinance is preferred. If the developer wishes to regulate building height in this manner through its private covenants, it is free to do so (as long as the height does not exceed the maximum number of feet permitted in the PUD).

3.1.F.viii. Please note the petitioner’s modified definition of “open space.” The petitioner’s definition may include improvements that have not traditionally been contemplated as open space in Westfield (see Zoning Ordinance definition), such as: potentially privately owned property (the Zoning Ordinance contemplates open space as being commonly owned), swimming pools, tennis courts, golf courses, active recreational facilities, developer or HOA offices, community buildings (public or private), assembly halls, outdoor auditoriums, sports fields, sports stadiums and “other community amenities.” This item may be worthy of additional discussion.

3.1.G. There are very few non-residential development standard restrictions applicable to this district. This item is worthy of further discussion.

3.2.C.i. It would appear that the petitioner intended to reference Section 3.4, not Section 3.2. This should be corrected. Please review the proposed permitted uses for discussion among the APC members. This District permits a wide variety of uses. Among them, the term “community recreational

facilities” is included. As defined, this use may include a sports stadium and other sports-related improvements that could potentially conflict with the City’s Family Sports Capital of America initiative. The City has requested that all proposed zoning entitlements in the PUD that potentially conflict with this initiative be removed until such time as a determination on the location of the sports campus improvements has been made. Any facilities that are simply designed to provide recreational opportunities for Symphony residents would certainly be acceptable. The non-residential development standards set forth in section 3.2.G. apply to the non-residential uses. These standards are not very significant. This regulatory approach is uncommon in Westfield and worthy of further discussion.

3.2.C.ii. The last sentence of this section is confusing. This sentence should be clarified and revised to avoid any confusion. Additionally, it would seem that this section would prohibit live-work type of units. If you dig into the definitions of the terms used in this section, this may not be the actual result. However, there is probably a clearer way to state this so as avoid possible misinterpretation. Additionally, it would appear that the petitioner intended to refer to Section 3.2.E. in this paragraph instead of Section 3.3.E. This should be corrected.

3.2.C.iv. If the term “garages” is appropriately added to the definition of “gross floor area,” the text “exclusive of open porches, terraces and garages” can be removed from this section. The APC may wish to discuss the petitioner’s minimum square footage proposed in this section. The 600 SF minimum is somewhat unconventional in Westfield.

3.2.C.v. If the term “garages” is appropriately added to the definition of “gross floor area,” the text “exclusive of open porches, terraces and garages” can be removed from this section. The APC may wish to discuss the petitioner’s minimum square footage proposed in this section. The 350 SF minimum is somewhat unconventional in Westfield. Additionally, the concept of accessory dwelling units is also somewhat unconventional and may be worthy of further discussion.

3.2.E.i. This section is a little confusing because “live-work unit” is identified as a land use in the permitted use table. It would seem that a “live-work unit” is more like a type of structure than a type of land use. It is unclear what type of work (or land use) is permitted in a live-work unit. This should be clarified and appropriate changes to the PUD should be made.

3.2.E.ii. The term “additional” means “in addition to the occupations already permitted in the Zoning Ordinance.” This should be confirmed and clarified in the PUD ordinance.

3.2.E.v. The APC may wish to discuss with the petitioner the 30% rule established in this section. The Zoning Ordinance does not govern such uses in this manner today. Further discussion may be desired.

3.2.F. The roman number “i” can be deleted (there is no following roman number “ii”). Please see all previous comments above pertaining to Section 3.1.F.

3.2.G. Generally, this entire section provides very few development standard restrictions in the Mixed Use District. The APC may support this approach, but this is not a common practice in Westfield. This item is worthy of further discussion.

3.2.G.iv.b. This paragraph should be deleted. If the Public Works Department wishes to issue an encroachment permit, it can do so. This is not a zoning matter.

3.2.G.vii. The City does not prefer to regulate building height by limiting the number of stories in a building. Instead a simple measurement in feet based on the way “building height” is defined in the Zoning Ordinance is preferred. If the developer wishes to regulate building height in this manner through its private covenants, it is free to do so (as long as the height does not exceed the maximum number of feet permitted).

[Comments pertaining to the remainder of the proposed Symphony PUD Ordinance will be provided as soon as possible. The contents of this report should provide more than enough discussion items for the APC to work through at the August 2, 2010 meeting. To the extent that any APC members wish to submit comments or questions for incorporation into this report, please do so. It is not too late.]